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c 35 Pension Benefits Act, 1987

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CHAPTER 35

An Act to revise the Pension Benefits Act

Assented to June 29th, 1987

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions**1. In this Act,**

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond

any amount that the member is required to contribute, but does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund;

“administrator” means the person or persons that administer the pension plan;

“assets”, in relation to an employer, means assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

“bridging benefit” means a periodic payment provided under a pension plan to a former member of the pension plan for a temporary period of time after retirement for the purpose of supplementing the former member’s pension benefit until the former member is eligible to receive benefits under the *Old Age Security Act* (Canada) or is either eligible for or commences to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*;

R.S.C. 1970,
cc. O-6, C-5

R.S.Q. 1977,
c. R-9

“certified copy” means a copy certified to be a true copy;

“collective agreement” has the same meaning as in the *Labour Relations Act*;

R.S.O. 1980,
c. 228

“Commission” means the Pension Commission of Ontario;

“commuted value” means the value calculated in the prescribed manner and as of a fixed date of a pension, a deferred pension, a pension benefit or an ancillary benefit;

“continuous”, in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of lay-off from employment;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan;

“defined benefit” means a pension benefit other than a defined contribution benefit;

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis;

“designated province” means a province or territory of Canada that is prescribed by the regulations as a province or territory in which there is in force legislation substantially similar to this Act;

“employee” means a natural person who is employed by an employer;

“employer”, in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning;

“file” means file with the Superintendent;

“former member” means a person who has terminated employment or membership in a pension plan, and,

- (a) is entitled to a deferred pension payable from the pension fund,
- (b) is in receipt of a pension payable from the pension fund,
- (c) is entitled to commence receiving payment of pension benefits from the pension fund within one year after termination of employment or membership, or
- (d) is entitled to receive any other payment from the pension fund;

“Guarantee Fund” means the Pension Benefits Guarantee Fund continued by this Act;

“insurance company” means a corporation authorized to undertake life insurance in Canada;

“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and his or her spouse and thereafter during the life of the survivor of them;

“member” means a member of the pension plan;

“Minister” means the member of the Executive Council designated by the Lieutenant Governor in Council for the purposes of this Act;

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*, 1982; 1982, c. 4

“normal retirement date” means the date or age specified in the pension plan as the normal retirement date of members;

“partial wind up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;

“participating employer”, in relation to a multi-employer pension plan, means an employer required to make contributions to the multi-employer pension plan;

“pension” means a pension benefit that is in payment;

“pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member or former member during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan or to which any other person is entitled upon the death of a member or former member;

“pension committee” means a committee that is the administrator of a pension plan;

“pension fund” means the fund maintained to provide benefits under or related to the pension plan;

“pension plan” means a plan organized and administered to provide pensions for employees, but does not include,

- (a) an employees’ profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),

R.S.C. 1952,
c. 148

- (b) a plan to provide a retiring allowance as defined in subsection 248 (1) of the *Income Tax Act* (Canada),
- (c) a plan under which all pension benefits are provided by contributions made by members, or
- (d) any other prescribed type of plan;

“prescribed” means prescribed by the regulations;

“qualification date” means, in respect of Ontario, the 1st day of January, 1965, and, in respect of a designated province, the date on which under the law of the designated province a pension plan must be registered by the proper authority in the designated province;

“reciprocal transfer agreement” means an agreement related to two or more pension plans that provides for the transfer of moneys or credits for employment or both in respect of individual members;

“registration” means registration under this Act;

“regulations” means regulations made under this Act;

“spouse” means either of a man and woman who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act, 1986*;

1986, c. 4

“Superintendent” means Superintendent of Pensions;

“surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

“termination”, in relation to employment, includes retirement and death;

“trade union” has the same meaning as in the *Labour Relations Act*; R.S.O. 1980, c. 228

“wind up” means the termination of a pension plan and the distribution of the assets of the pension fund;

“Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan*. R.S.C. 1970, c. C-5

APPLICATION

2. This Act binds the Crown. Crown bound

3. This Act applies to every pension plan that is provided for persons employed in Ontario. Employees in Ontario

4.—(1) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his or her employer is located and to which the person is required to report for work. Place of employment

(2) A person who is not required to report for work at an establishment of his or her employer shall be deemed to be employed in the province in which is located the establishment of his or her employer from which the person’s remuneration is paid. Idem

5. The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations. Greater pension benefits

REGISTRATION AND ADMINISTRATION

6.—(1) No person shall administer a pension plan unless a certificate of registration or an acknowledgment of application for registration of the pension plan has been issued by the Superintendent. Prohibition of administration of unregistered pension plan

(2) Subsection (1) does not apply to prevent administration during the first ninety days after the establishment of the pension plan. Application of subs. (1)

7.—(1) No person shall administer a pension plan if registration of the pension plan has been refused or revoked by the Superintendent. Refusal or revocation

(2) Subsection (1) does not apply to prevent administration for the purpose of wind up of a pension plan. Exception

Adminis-
trator

8.—(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,

- (a) the employer or employers;
- (b) a pension committee composed of one or more representatives of,
 - (i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and
 - (ii) members of the pension plan;
- (c) a pension committee composed of representatives of members of the pension plan;
- (d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;
- (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; or
- (f) a board, agency or commission made responsible by an Act of the Legislature for the administration of the pension plan.

Additional
members

(2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

Affiliate
1982, c. 4

(3) For the purpose of clause (1) (b), “employer” includes “affiliate” as defined in the *Business Corporations Act, 1982*, if the employer is a body corporate.

Application
for
registration

9.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is established, for registration of the pension plan.

(2) An application for registration shall be made by paying the prescribed fee to the Commission and filing, Requirements for registration

- (a) a completed application in the prescribed form;
- (b) certified copies of the documents that create and support the pension plan;
- (c) certified copies of the documents that create and support the pension fund;
- (d) a certified copy of any reciprocal transfer agreement related to the pension plan;
- (e) a certified copy of the explanations and other information provided under subsection 26 (1); and
- (f) any other prescribed documents.

(3) For the purpose of subsection (2), “document” includes “collective agreement”. Collective agreement

10.—(1) The documents that create and support a pension plan shall set out the following information: Contents of pension plan

- 1. The method of appointment and the details of appointment of the administrator of the pension plan.
- 2. The conditions for membership in the pension plan.
- 3. The benefits and rights that are to accrue upon termination of employment, termination of membership, retirement or death.
- 4. The normal retirement date under the pension plan.
- 5. The requirements for entitlement under the pension plan to any pension benefit or ancillary benefit.
- 6. The contributions or the method of calculating the contributions required by the pension plan.
- 7. The method of determining benefits payable under the pension plan.
- 8. The method of calculating interest to be credited to contributions under the pension plan.

9. The mechanism for payment of the cost of administration of the pension plan and pension fund.
10. The mechanism for establishing and maintaining the pension fund.
11. The treatment of surplus during the continuation of the pension plan and on the wind up of the pension plan.
12. The obligation of the administrator to provide members with information and documents required to be disclosed under this Act and the regulations.
13. The method of allocation of the assets of the pension plan on windup.
14. Particulars of any predecessor pension plan under which members of the pension plan may be entitled to pension benefits.
15. Any other prescribed information related to the pension plan or pension fund or both.

Multi-
employer
pension plan

(2) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan.

Gradual and
uniform
accrual of
pension
benefits

11.—(1) A pension plan is not eligible for registration unless it provides for the accrual of pension benefits in a gradual and uniform manner.

Variable
contributions
or pension
benefits

(2) A pension plan is not eligible for registration if the formula for computation of the employer's contributions to the pension fund or the pension benefit provided under the pension plan is variable at the discretion of the employer.

Variable
deferred
profit-sharing

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits is not eligible for registration if the formula governing allocation of contributions to the pension fund and profits among members of the plan is variable at the discretion of the employer.

Exception

(4) Notwithstanding subsections (1), (2) and (3), the Superintendent may register a pension plan if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members.

12.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

Application
for
registration
of
amendment

(2) An application for registration of an amendment shall be made by paying the prescribed fee to the Commission and filing,

Requirements
for
registration

- (a) a certified copy of the amending document;
- (b) certified copies of any other prescribed documents;
and
- (c) any other prescribed information.

(3) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund.

Filing of
changes

13.—(1) An amendment to a pension plan is not effective until an application for registration of the amendment is made in accordance with this Act and the regulations.

When
amendment
becomes
effective

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered.

Retroactive
amendment

14.—(1) An amendment to a pension plan is void if the amendment purports to reduce,

Reduction
of benefits

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan;
or
- (c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

(2) Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Application
of subs. (1)

Idem

(3) Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

Acknowledgment of application for registration

15. The Superintendent shall issue an acknowledgment of application for registration of a pension plan within thirty days after receiving an application for the registration that complies with this Act and the regulations.

Issuance of certificate of registration

16. The Superintendent shall issue a certificate of registration for each pension plan registered under this Act.

Issuance of notice of registration

17. The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act.

Refusal or revocation of registration

18.—(1) The Superintendent may,

- (a) refuse to register a pension plan that does not comply with this Act and the regulations;
- (b) revoke the registration of a pension plan that does not comply with this Act and the regulations;
- (c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;
- (d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;
- (e) revoke the registration of an amendment that does not comply with this Act and the regulations.

Application of subs. (1)

(2) The authority of the Superintendent under subsection (1) is subject to the right to a hearing under section 90.

Effect of refusal or revocation

(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.

Idem

(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.

(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations. Wind up

19.—(1) Every employer who maintains a pension plan on the date this Act comes into force shall amend the pension plan to conform with this Act and the regulations within two years after the date this Act comes into force. Conforming amendment

(2) If a pension plan is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is in effect on the date this section comes into force, the parties to the collective agreement or arbitration award shall amend the pension plan to conform to this Act and the regulations not later than the earlier of, Exception
R.S.O. 1980,
c. 228

(a) the date that is three years after the date on which this section comes into force; or

(b) the date that is two years after the date on which this section comes into force, where the collective agreement or arbitration award expires within the two-year period.

(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is the subject of an application for registration submitted after this Act comes into force, if the collective agreement was entered into or the arbitration award was made before this Act comes into force and the pension plan would have been eligible for registration under the *Pension Benefits Act*. Registration

R.S.O. 1980,
c. 373

(4) Subsection (2) applies to a pension plan referred to in subsection (3). Application of subs. (2)

20.—(1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations. Duty of administrator

(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations. Application of subs. (1)

(3) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with, Idem

- (a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and
- (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

Application
of subs. (3)

(4) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations.

Idem,
amendment

(5) The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment.

Adminis-
trator's
annual
information
return

21.—(1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the prescribed form and shall pay the prescribed filing fee.

Additional
reports

(2) The administrator of a pension plan shall file additional reports at the times and containing the information prescribed by the regulations.

Reciprocal
transfer
agreement

22. An administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan.

Care,
diligence
and skill

23.—(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special
knowledge
and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of his or her profession, business or calling, ought to possess.

Member of
pension
committee,
etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit his or her interest to conflict with his or her duties and powers in respect of the pension fund.

Conflict of interest

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Employment of agent

(6) No person other than a prescribed person shall be a trustee of a pension fund.

Trustee of pension fund

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Responsibility for agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Employee or agent

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

Benefit by administrator

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Member of pension committee, etc.

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan.

Payment to agent

24. An employer shall provide to the administrator of the pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations.

Information from employer

Advisory
committee

25.—(1) The members and former members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee.

Representa-
tion

(2) Each class of employees that is represented in the pension plan is entitled to appoint at least one representative to the advisory committee established under subsection (1).

Idem, former
members

(3) The former members of the pension plan are entitled to appoint one representative to the advisory committee established under subsection (1).

Purposes

(4) The purposes of an advisory committee are,

- (a) to monitor the administration of the pension plan;
- (b) to make recommendations to the administrator respecting the administration of the pension plan; and
- (c) to promote awareness and understanding of the pension plan on the part of members of the pension plan and persons receiving pension benefits under the pension plan.

Examination
of records

(5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without the person's prior consent.

Application
of subs. (1)

(6) Subsection (1) does not apply,

- (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; or
- (b) in respect of a multi-employer pension plan established pursuant to a collective agreement.

Adminis-
trator
to provide
information

(7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee.

DISCLOSURE OF INFORMATION

26.—(1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member of the pension plan, Information from administrator

- (a) an explanation of the provisions of the plan that apply to the person;
- (b) an explanation of the person's rights and obligations in respect of the pension plan; and
- (c) any other information prescribed by the regulations.

(2) The administrator shall provide the information mentioned in subsection (1), Time

- (a) to each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;
- (b) to a person who is likely to become eligible to become a member of the pension plan, within the prescribed period of time before the date on which the person is likely to become eligible;
- (c) to each person who becomes eligible to become a member of the pension plan upon becoming employed by the employer, within the prescribed period of time after the date on which the person becomes so employed.

(3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection. Information from employer

27.—(1) If the administrator of a pension plan applies for registration of an amendment to the pension plan that would result in a reduction of pension benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund, the Superintendent shall require the administrator to transmit to such persons as the Superintendent may specify a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Superintendent, and the administrator shall provide to the Superintendent a copy of the notice and Notice of proposed amendment

shall certify to the Superintendent the date on which the last such notice was transmitted.

Registration

(2) If the Superintendent has required the administrator to transmit notices under subsection (1), the Superintendent shall not register an amendment mentioned in that subsection before the expiration of forty-five days after the date certified to the Superintendent under that subsection, but after the expiration of the forty-five day period the Superintendent may register the amendment with such changes as are requested in writing by the administrator.

Notice after registration

(3) Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, former member or other person entitled to payment from the pension fund who is affected by the amendment.

Order dispensing with notice

(4) The Superintendent need not require the transmittal of notices under subsection (1) or by order may dispense with the notice required by subsection (3), or both,

- (a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;
- (b) if the amendment has been agreed to by a trade union that represents the members; or
- (c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Notice to trade union

(5) Where a proposed amendment affects members or former members represented by a trade union that is a party to a collective agreement filed as a document that creates or supports a pension plan, the administrator shall transmit to the trade union the written notice mentioned in subsection (1).

Annual statement of pension benefits

28. The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits.

Statement of benefits

29.—(1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a

member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.

(2) Subsection (1) applies in respect of a multi-employer pension plan where a member ceases to be a member, but does not apply where a member terminates employment with an employer but continues to be a member. Multi-employer pension plan

30.—(1) On written request, the administrator of a pension plan shall make available the prescribed documents and information in respect of the pension plan and the pension fund for inspection without charge by, Inspection of administrator's documents

- (a) a member;
- (b) a former member;
- (c) the spouse of a member or former member;
- (d) any other person entitled to pension benefits under the pension plan;
- (e) an agent authorized in writing by a person mentioned in clause (a), (b), (c) or (d); or
- (f) a representative of a trade union that represents members of the pension plan.

(2) The administrator shall make the prescribed documents and information available, Place of inspection

- (a) for a member, at the premises of the employer where the member is employed;
- (b) for a former member, at the premises where the former member was employed; or
- (c) for a member, former member or any other person, at such other location as may be agreed upon by the administrator and the member, former member or other person making the request.

(3) The administrator shall permit the person making the inspection to make extracts from or to copy the prescribed documents and information. Extracts or copies

- Idem** (4) On request, the administrator shall provide the person making the inspection with copies of any of the prescribed documents or information upon payment to the administrator of a reasonable fee.
- Limitation** (5) A member, a former member, a spouse, an other person, an agent or a trade union by a representative is entitled to make an inspection under subsection (1) not more than once in a calendar year.
- Inspection of filed documents** **31.** The individuals mentioned in clauses 30 (1) (a) to (f) are entitled to inspect at the offices of the Commission during business hours of the Commission the documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund, and are entitled to copies of the documents upon payment of the prescribed fees.

MEMBERSHIP

- Eligibility for membership** **32.—**(1) Every employee of a class of employees for whom a pension plan is established is eligible to be a member of the pension plan.
- Full-time employment** (2) An employee in a class of employees for whom a pension plan is maintained is entitled to become a member of the pension plan upon application at any time after completing twenty-four months of continuous full-time employment.
- Part-time employment** (3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer, with the lesser of,
- (a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings; or
 - (b) 700 hours of employment with the employer,
- in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan.
- Multi-employer pension plan** (4) A multi-employer pension plan may require not more than the lesser of,
- (a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings with one or more of the participating employers; or

- (b) 700 hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan.

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. Approval

33. A member of a pension plan who is employed continuously on a less than full-time basis does not cease to be a member by reason only that he or she has earnings of less than 35 per cent of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than 700 hours in a calendar year. Loss of membership

34.—(1) Where there is a dispute as to whether or not an employee is a member of a class of employees for whom a pension plan is established or maintained, the Superintendent, subject to section 90, by order may require the administrator to accept the employee as a member. Dispute as to member of class of employees

(2) The Superintendent may make the order if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the class. Ground for order

35. An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment. Separate pension plan

RETIREMENT AND VESTING

36.—(1) The normal retirement date under a pension plan submitted for registration after the date this Act comes into force shall not be later than one year after the attainment of sixty-five years of age. Normal retirement date

(2) Every pension plan registered or submitted for registration before the date on which this Act comes into force shall be deemed to specify a normal retirement date in respect of Transitional

pension benefits that accrue after that date that is not later than one year after attainment of sixty-five years of age, unless the pension plan specifies an earlier retirement date.

Right to pension

(3) A member of a pension plan who continues employment and membership in the pension plan after attaining the age that is the normal retirement date under the pension plan is entitled on retirement from employment to payment of the pension benefits to which the member would have been entitled had the member retired from employment or terminated membership in the pension plan on attaining the normal retirement date and any additional pension benefits accrued under the pension plan that result from the member's employment after the normal retirement date.

Continuation after normal retirement date

(4) A member of a pension plan who continues employment after attaining the age that is the normal retirement date under the pension plan and who is not receiving a pension under the pension plan is entitled to continue membership in the pension plan and has the right to continue to accrue pension benefits under the pension plan subject to any terms of the pension plan,

- (a) fixing a maximum number of years of employment or membership that can be taken into account for purposes of determining a pension benefit; or
- (b) fixing a maximum amount of the pension benefit.

Deferred pension for past service

37.—(1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

- (2) The qualifications are,
- (a) that the member must have been employed by the employer, or have been a member of the pension plan, for a continuous period of at least ten years;
 - (b) that the member must have reached the age of forty-five years; and
 - (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on the 31st day of December, 1986 in respect of employment before

the 1st day of January, 1987 in Ontario or in a designated province,

- (a) under the terms of the pension plan, with respect to employment on or after the qualification date;
- (b) by an amendment to the pension plan made on or after the qualification date; and
- (c) by the creation of a new pension plan on or after the qualification date.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Application
of
subss. (1-3)

38.—(1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Deferred
pension

(2) The qualifications are,

Qualifications

- (a) that the member must be a member on or after the date on which this Act comes into force;
- (b) that the member must be a member for a continuous period of at least twenty-four months; and
- (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

Amount

- (a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date if the qualification date is later than the 31st day of December, 1986;
- (b) under any amendment made to the pension plan after the 31st day of December, 1986; and
- (c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Application
of
subss. (1-3)

Termination
by member

39.—(1) A person who is,

- (a) a member of a multi-employer pension plan;
- (b) a member of a pension plan who is employed by the employer on a less than full-time basis; or
- (c) a member of a pension plan who has been laid off from employment by the employer,

is entitled to terminate his or her membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period of time as is specified in the pension plan.

Effect of
termination

(2) For the purpose of determining benefits under this Act, a person mentioned in subsection (1) who terminates his or her membership in a pension plan shall be deemed to have terminated his or her employment.

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans.

Determi-
nation of
entitlement

(4) For the purpose of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan shall be deemed not to have terminated employment until the member terminates membership in the pension plan.

Certification
of new
bargaining
agent
R.S.O. 1980,
c. 228

(5) Where a member of a multi-employer pension plan is represented by a trade union, which, in accordance with section 56 of the *Labcur Relations Act*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate membership in the first plan.

Application
of subs. (5)

(6) Subsection (5) does not apply where there is a reciprocal agreement respecting the two pension plans.

BENEFITS

Value of
deferred
pension

40.—(1) If the commuted value of a former member's pension or deferred pension accrued in respect of employment before the 1st day of January, 1987 is less than the value of the contributions the former member was required to make

under the pension plan before that date plus interest credited to the contributions, the former member is entitled to have the commuted value of the pension or deferred pension increased so that the commuted value is equal to the value of the contributions plus interest.

(2) An increase in the value of the pension or deferred pension in respect of employment before the 1st day of January, 1987 that results from an amendment to the pension plan made on or after that date may be included in calculating the commuted value of the pension or deferred pension for the purposes of subsection (1). Effect of amendment

(3) A former member's contributions to a pension plan made on or after the 1st day of January, 1987 and the interest on the contributions shall not be used to provide more than 50 per cent of the commuted value of a pension or deferred pension in respect of contributory benefits accrued after that date to which the member is entitled under the pension plan on termination of membership or employment. 50 per cent rule

(4) A former member who is entitled to a pension or deferred pension on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the former member's contributions under the pension plan made on or after the 1st day of January, 1987 and the interest on the contributions exceed one-half of the commuted value of the former member's pension or deferred pension in respect of the contributory benefit accrued after that date. Entitlement to excess amount

(5) The following may be excluded in determining that part of the commuted value of a pension or deferred pension to which subsections (3) and (4) apply: Exclusions

1. Defined contribution benefits.
2. Benefits that result from additional voluntary contributions.
3. In the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions.
4. Any other benefits prescribed for the purposes of this subsection.

Matters that
may be
included

(6) The following may be included by the administrator of the pension plan in calculating a member's contributory benefit for the purposes of subsection (3):

1. Ancillary benefits related to employment on or after the 1st day of January, 1987.
2. Increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the 1st day of January, 1987 but that are not included in calculating commuted value under subsection (2).
3. Pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the 1st day of January, 1987.

Ancillary
benefits

41.—(1) A pension plan may provide the following ancillary benefits:

1. Disability benefits.
2. Death benefits in excess of those provided in section 49 (pre-retirement death benefit).
3. Bridging benefits.
4. Supplemental benefits, other than bridging benefits, payable for a temporary period of time.
5. Early retirement options and benefits in excess of those provided by section 42 (early retirement option).
6. Postponed retirement options and benefits in excess of those referred to in subsection 36 (4).
7. Any prescribed ancillary benefit.

Use in
calculating
pension
benefit

(2) An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit.

Consent of
employer

(3) For the purposes of subsection (2) and clause 14 (1) (c), where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member

or former member has met all other eligibility requirements, the employer shall be deemed to have given the consent to the member or former member.

42.—(1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she, Early retirement option

- (a) terminated employment on or after the date on which this Act comes into force;
- (b) is entitled to a deferred pension under this Act; and
- (c) is within ten years of attaining the normal retirement date.

(2) A member who is within ten years of attaining the normal retirement date and who would be entitled to a deferred pension on termination of employment with the employer is entitled upon termination of the employment or on the wind up of the pension plan in whole or in part to receive an early retirement pension under the pension plan. Idem

(3) The commuted value of a member's early retirement pension must be not less than the commuted value of the member's pension benefit under the pension plan. Committed value

(4) The commuted value of a former member's early retirement pension must be not less than the commuted value of the former member's deferred pension benefit under the pension plan. Idem, former member

(5) The member or former member is entitled to require the commencement of payment of the early retirement pension at any time within the ten year period mentioned in subsection (1) or (2). Payment

(6) An election under subsection (1) or (2) shall be made in writing, signed by the member or former member and delivered to the administrator of the pension plan. Election

43.—(1) A former member of a pension plan who, on or after the date on which this Act comes into force, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension, Transfer

- (a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
- (b) into a prescribed retirement savings arrangement; or
- (c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.

Limitation

(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

**Application
of subs. (1)**

(3) Subsection (1) does not apply to a former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan or under section 42, unless the pension plan provides such an entitlement.

Direction

(4) A former member may exercise his or her entitlement under subsection (1) by delivering to the administrator within the prescribed period of time a direction in a form supplied by the Superintendent.

**Compliance
with
direction**

(5) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

**Terms of
arrangement
or deferred
annuity**

(6) The administrator shall not make payment,

- (a) under clause (1) (b) unless the retirement savings arrangement meets the requirements prescribed by the regulations; or
- (b) under clause (1) (c) unless the contract to purchase the deferred life annuity meets the prescribed requirements.

Approval

(7) If a payment under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent.

(8) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Terms and conditions

(9) If a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent by order, subject to section 90 (hearing), may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

Order for repayment

(10) Subject to section 90 (hearing and appeal), an order for payment under subsection (9), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Enforcement

(11) The administrator is discharged on making the payment or transfer in accordance with the direction of the former member if the payment or transfer complies with this Act and the regulations.

Discharge of administrator

44.—(1) The administrator of a pension plan who is required by the pension plan to provide a pension, a deferred pension or an ancillary benefit may purchase the pension, deferred pension or ancillary benefit from an insurance company.

Purchase of pension

(2) The authority of the administrator under subsection (1) is subject to the entitlement of a member under section 43 and to the limitations prescribed in relation to transfers of funds from pension funds.

Limitations

(3) If a purchase under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the Superintendent.

Approval by Superintendent

(4) The Superintendent may approve a purchase mentioned in subsection (3) subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Idem

(5) If a purchase that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is a failure to comply with a term or condition attached to the approval, the Superintendent, subject to section 90 (hearing), by order may require any person to whom payment under

Order for repayment

subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

Enforcement (6) Subject to section 90 (hearing and appeal), an order for payment under subsection (5), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Joint and survivor pension benefits **45.**—(1) Every pension paid under a pension plan to a former member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.

Commuted value (2) The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the former member.

Amount of survivor benefit (3) The amount of the pension payable to the survivor of the former member and the spouse of the former member shall not be less than 60 per cent of the pension paid to the former member during the joint lives of the former member and his or her spouse.

Application of subss. (1-3) (4) Subsections (1) to (3) do not apply,

- (a) in respect of a pension benefit if payment of the pension has commenced before the date on which this Act comes into force; or
- (b) in respect of a former member who is living separate and apart from his or her spouse on the date that payment of the first instalment of the pension is due.

Deferred life annuity (5) Where,

- (a) prior to the date on which this Act comes into force, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under the *Pension Benefits Act*;
- (b) payments have not commenced under the annuity on the date on which this Act comes into force; and
- (c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section and the insurance company shall make payments accordingly.

(6) For the purposes of subsection (5), the insurance company shall be deemed to be the administrator under sections 46 and 47. Application of ss.46, 47

46.—(1) Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit. Information for payment

(2) The person entitled to the payment shall provide the information to the administrator. Person to provide information

(3) In the absence of actual notice to the contrary, the administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2) or, if the person does not provide the information, in accordance with the latest information in the records of the administrator. Discharge of administrator

47.—(1) The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company a written waiver in the prescribed form or a certified copy of a domestic contract, as defined in Part IV of the *Family Law Act, 1986*, containing the waiver. Waiver of joint and survivor pension benefit
1986, c. 4

(2) The waiver is not effective unless the written direction or certified copy is delivered to the administrator within the period of twelve months immediately preceding the commencement of payment of the pension benefit. Time

(3) Persons who have delivered a waiver under subsection (1) may jointly cancel the waiver by written and signed notice delivered to the administrator before commencement of payment of the pension benefit. Cancellation of waiver

48.—(1) The spouse of a deceased former member of a pension plan who is receiving a pension under the pension plan is not disentitled to payment of the pension by reason only of remarriage after the death of the former member. Remarriage of spouse

Application
of subs. (1)

(2) Subsection (1) applies in respect of pensions that are being paid on the 1st day of January, 1987 or that commence to be paid after the 31st day of December, 1986.

Pre-
retirement
death benefit

49.—(1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 38 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the deferred pension; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

Idem

(2) If a member of a pension plan continues in employment after the normal retirement date under the pension plan and dies before commencement of payment of pension benefits referred to in section 38, the person who is the spouse of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the pension benefit; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the pension benefit.

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply where the member or former member and his or her spouse are living separate and apart on the date of the death of the member or former member.

Election

(4) A spouse who has an entitlement under subsection (1) or (2) shall elect within the prescribed period of time to receive payment under clause (a) or (b) of the subsection and if the spouse does not make an election, the spouse shall be deemed to have elected to receive an immediate pension.

Calculation
of benefit

(5) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's employment were terminated immediately before the member's death.

Designated
beneficiary

(6) A member or former member of a pension plan may designate a beneficiary and the beneficiary is entitled to be

paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if,

- (a) the member or former member does not have a spouse on the date of death; or
- (b) the member or former member is living separate and apart from his or her spouse on that date.

(7) The personal representative of the member or former member is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member or former member, if the member or former member has not designated a beneficiary under subsection (6) and, Estate entitlement

- (a) does not have a spouse on the date of the member or former member's death; or
- (b) is living separate and apart from his or her spouse on that date.

(8) If the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member or former member upon the death of the member or former member, the commuted value of the payments may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7). Dependent children

(9) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment. Information

(10) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person. Discharge of administrator

(11) A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following: Offset

1. The reduction shall be calculated in the prescribed manner.
2. The reduction shall not exceed the prescribed limits.

Discharge of
entitlement

(12) Payment in accordance with this section replaces the entitlement of a member or former member in respect of a deferred pension mentioned in section 38.

Order or
domestic
contract

(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in a domestic contract or an order referred to in section 52 (payment on marriage breakdown).

Waiver

(14) A member and his or her spouse may waive the spouse's entitlement under subsection (1) or (2) in the prescribed form and, for the purpose, subsections (6) and (7) apply as if the member does not have a spouse on the date of the member's death.

Definition

R.S.O. 1980,
c. 143

(15) In this section, "personal representative" has the same meaning as in the *Estates Administration Act*.

Variation of
payment to
disabled
person

50. A pension plan may permit variation in the terms of payment of a pension or deferred pension by reason of the mental or physical disability of a member or former member that is likely to shorten considerably the life expectancy of the member or former member.

Commuted
value

51.—(1) A pension plan may provide for payment to a former member of the commuted value of a benefit if the annual benefit payable at the normal retirement date is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year that the former member terminated employment.

Idem

(2) A pension plan registered before the date on which this Act comes into force may provide that upon termination of employment a person entitled to a deferred pension under section 37 (deferred pension) is entitled to payment of an amount not greater than 25 per cent of the commuted value of the deferred pension.

Payment on
marriage
breakdown
1986, c. 4

52.—(1) A domestic contract as defined in Part IV of the *Family Law Act, 1986* or an order under Part I of that Act is not effective to require payment of a pension benefit before the earlier of,

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the relevant member or former member.

(2) A domestic contract or an order mentioned in subsection (1) is not effective to cause a party to the domestic contract or order to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member or former member during the period when the party and the member or former member were spouses. Maximum percentage

(3) If payment of a pension or a deferred pension is divided between spouses by a domestic contract or an order mentioned in subsection (1), the administrator is discharged on making payment in accordance with the domestic contract or order. Discharge of administrator

(4) If a domestic contract or an order mentioned in subsection (1) affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner. Revaluation of joint and survivor pension

(5) A spouse on whose behalf a certified copy of a domestic contract or order mentioned in subsection (1) is given to the administrator of a pension plan has the same entitlement, on termination of employment by the member or former member, to any option available in respect of the spouse's interest in the pension benefits as the member or former member named in the domestic contract or order has in respect of his or her pension benefits. Transfer

53.—(1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in, Discrimination on basis of sex

- (a) determining the amount of contributions required to be made by a member of the plan;
- (b) determining the pension benefits or the commuted value of pension benefits that a member, former member or other beneficiary is or may become entitled to;
- (c) the provision of eligibility conditions for membership; and
- (d) the provision of ancillary benefits.

(2) In order to comply with subsection (1), the administrator may, Administration

- (a) use annuity factors that do not differentiate as to sex;

- (b) provide for employer contributions that vary according to the sex of the employee; or
- (c) use any prescribed method of calculation or valuation.

Application

(3) This section applies in respect of contributions, benefits and conditions in relation to,

- (a) employment after the 31st day of December, 1986;
- (b) employment before the 1st day of January, 1987, in so far as it is dealt with in an amendment made to the pension plan after the 31st day of December, 1986; and
- (c) employment before the 1st day of January, 1987, in so far as it is dealt with in a pension plan established after the 31st day of December, 1986.

Inflation
protection

54.—(1) Pension benefits, pensions or deferred pensions shall be adjusted in accordance with the established formula or formulas and in the prescribed manner to provide inflation-related increases.

Idem

(2) Any formula or formulas for any inflation related adjustments to pension benefits, pensions or deferred pensions shall be established only by amendment to this Act.

C.P.P./
Q.P.P.
offsets
R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

55.—(1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) shall not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

Idem

(2) The amount of the reduction of a member's pension benefit required under the pension plan in relation to payments mentioned in subsection (1) shall not be increased by reason of an increase in the payments after the date on which the member's employment is terminated.

Reduction re
*Old Age
Security Act*
(Canada)

(3) A pension plan for registration of which application is made on or after the date on which this Act comes into force shall not permit the reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada).

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered under the *Pension Benefits Act* that permitted such a reduction. Application of subs. (3)
R.S.O. 1980,
c. 373

(5) A pension plan shall not permit reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the 1st day of January, 1987. Idem
R.S.C. 1970,
c. O-6

(6) Where a pension plan provides for the reduction of a member's or former member's bridging benefit by reason that the member or former member receives or is eligible to receive retirement benefits before attaining sixty-five years of age under the *Canada Pension Plan* or the *Quebec Pension Plan*, the reduction may only be made in the prescribed circumstances. Bridging benefit

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9

(7) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada), the variation shall be applied in the prescribed manner. Variations based on other benefits
R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

CONTRIBUTIONS

56.—(1) A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations. Funding

(2) An employer required to make contributions under a pension plan, or a person required to make contributions under a pension plan on behalf of an employer, shall make the contributions in the prescribed manner and in accordance with the prescribed requirements for funding, Payment

(a) to the pension fund; or

(b) if pension benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan.

57.—(1) The administrator of a pension plan or, if there is an agent of the administrator responsible for receiving contributions under the pension plan, the administrator and the agent shall give written notice to the Superintendent of a contribution that is not paid when due. Notice to Superintendent

(2) The administrator and the agent shall give the notice to the Superintendent within sixty days after the date on which When notice required

the administrator or the agent first became aware of the failure to pay the contribution.

Multi-
employer
pension plan

(3) The administrator and the agent of a multi-employer pension plan shall give the notice to the Superintendent within the prescribed period of time after the date on which the administrator or the agent first became aware of the failure to pay the contribution.

Trust
property

58.—(1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

Money
withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be money received by the employer from the employee.

Accrued
contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

Wind up

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

Lien and
charge

(5) The administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4).

Application
of
subss. (1,
3, 4)

(6) Subsections (1), (3) and (4) apply whether or not the moneys have been kept separate and apart from other money or property of the employer.

Moneys to
be paid to
insurance
company

(7) Subsections (1) to (6) apply with necessary modifications in respect of moneys to be paid to an insurance company that guarantees pension benefits under a pension plan.

Accrual

59.—(1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

(2) Interest on contributions shall be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements. Interest

60. The administrator may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations. Collection of contributions

61. The administrator of a multi-employer pension plan may require a person who receives contributions to the pension fund or who administers or invests the pension fund to be bonded in an amount required by the administrator or in the prescribed amount. Bond

62. An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan. Statement of employer's obligation

63. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations. Investment of pension fund

LOCKING IN

64.—(1) No member or former member is entitled to a refund from a pension fund of contributions made in respect of employment in Ontario or a designated province on or after the qualification date. Refunds

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member or former member or a payment under subsection 40 (4) (entitlement to excess amount). Idem

(3) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a pension or to a deferred pension under section 37 (deferred pension for past service) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment before the 1st day of January, 1987. Refund related to past employment

Refund
related
to post-
reform
employment

(4) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a pension or to a deferred pension under section 38 (deferred pension) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment after the 31st day of December, 1986.

Application
of subs. (1)

- (5) Subsection (1) does not apply,
- (a) to prevent the commutation of a pension benefit under subsection 51 (1) (commuted value);
 - (b) to prevent a payment under subsection 51 (2); or
 - (c) to such other circumstances as are prescribed.

Application
of
subss. (3, 4)

(6) Subsections (3) and (4) do not apply in respect of a member of a multi-employer pension plan unless the member terminates his or her membership in the multi-employer pension plan.

Refund with
consent

(7) Notwithstanding subsection (1), on application by the administrator, contributions may be refunded to a member or a former member with the consent of the Commission.

Consent of
Commission

(8) On application by the administrator of a pension plan, the Commission may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.

Shorter
qualification
periods

65.—(1) A pension plan may provide for shorter qualification periods for entitlement to a deferred pension than those set out in sections 37 (deferred pension for past service) and 38 (deferred pension).

Refund

(2) A pension plan that provides for qualification periods for a deferred pension that are shorter than the periods set out in section 37 or 38 may permit a refund of contributions to a person who terminates employment after becoming entitled to a deferred pension under the pension plan before the completion of the qualification period referred to in section 37 or 38.

Void
transactions

66.—(1) Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan is void.

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with section 43 (transfer), 44 (purchase of pension), clause 49 (1) (b) (pre-retirement death benefit) or subsection 74 (2) (transfer rights on wind up) is void. Idem

(3) Subsections (1) and (2) do not apply to prevent the assignment of an interest in moneys payable under a pension plan or moneys payable as a result of a purchase or transfer under section 43, 44, clause 49 (1) (b) or subsection 74 (2) (transfer rights on wind up) by an order under the *Family Law Act, 1986* or by a domestic contract as defined in Part IV of that Act. Exemption for order or separation agreement
1986, c. 4

67.—(1) Money payable under a pension plan is exempt from execution, seizure or attachment. Exemption from execution, seizure or attachment

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity under section 43, 44, 49 or subsection 74 (2) is exempt from execution, seizure or attachment. Idem

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with section 43, 44, 49 or subsection 74 (2) is exempt from execution, seizure or attachment. Idem

(4) Notwithstanding subsection (1), payments under a pension or that result from a purchase or transfer under section 43, 44, clause 49 (1) (b) or subsection 74 (2) are subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario to a maximum of one-half the money payable. Order for support or maintenance

(5) Subsection (4) applies to orders for support or maintenance enforceable in Ontario whether made before or after the coming into force of this Act. Application of subs. (4)

68.—(1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer under section 43, 44, 49 or subsection 74 (2) to which a person is entitled is not capable of being commuted or surrendered during the person's life. Commutation or surrender

(2) A transaction that purports to commute or surrender such a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement is void. Void transaction

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension under section 50 (variation of payment to disabled person) or to a commutation of a benefit under section 51 (commuted value).

WINDING UP

Winding up

69.—(1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

Notice

(2) The administrator shall give written notice of proposal to wind up the pension plan to,

- (a) the Superintendent;
- (b) each member of the pension plan;
- (c) each former member of the pension plan;
- (d) each trade union that represents members of the pension plan;
- (e) the advisory committee of the pension plan; and
- (f) any other person entitled to a payment from the pension fund.

Notice
of partial
wind up

(3) In the case of a proposal to wind up only part of a pension plan, the administrator is not required to give written notice of the proposal to members, former members or other persons entitled to payment from the pension fund if they will not be affected by the proposed partial wind up.

Information

(4) The notice of proposal to wind up shall contain the information prescribed by the regulations.

Effective
date

(5) The effective date of the wind up shall not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits, or, in any other case, on the date notice is given to members.

Order by
Superin-
tendent

(6) The Superintendent by order may change the effective date of the wind up if the Superintendent is of the opinion that there are reasonable grounds for the change.

Winding up
order by
Superin-
tendent

70.—(1) The Superintendent by order may require the wind up of a pension plan in whole or in part if,

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;
- (f) all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person;
- (g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up in whole or in part;
- (h) in the case of a multi-employer pension plan,
 - (i) there is a significant reduction in the number of members, or
 - (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (i) any other prescribed event or prescribed circumstance occurs.

R.S.C. 1970,
c. B-3

(2) In an order under subsection (1), the Superintendent shall specify the effective date of the wind up, the persons or class or classes of persons to whom the administrator shall give notice of the order and the information that shall be given in the notice.

Date and
notice

Wind up
report

71.—(1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out,

- (a) the assets and liabilities of the pension plan;
- (b) the benefits to be provided under the pension plan to members, former members and other persons;
- (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- (d) such other information as is prescribed.

Payments
out of
pension
fund after
notice of
proposal to
wind up

(2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.

Application
of subs. (2)

(3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.

Approval

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent.

Refusal to
approve

(5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.

Rights and
benefits
on partial
wind up

(6) On the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.

Appointment
of
administrator
to wind up

72.—(1) If a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator fails to act, the Superintendent may act as or may appoint an administrator.

(2) The reasonable administration costs of the Superintendent or of the administrator appointed by the Superintendent may be paid out of the pension fund.

Costs of
adminis-
tration on
winding up

73.—(1) On the wind up of a pension plan in whole or in part, the administrator shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the pension plan, the options available to the person and any other prescribed information.

Notice of
entitlements

(2) If a person to whom notice is given under subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or shall be deemed to have elected to receive immediate payment of a pension benefit, if eligible therefor, or, if not eligible to receive immediate payment of a pension benefit, to receive a pension commencing at the earliest date mentioned in clause 75 (1) (b), and the administrator of the pension plan shall make payment in accordance with the election or deemed election.

Election

74.—(1) For the purpose of determining the amounts of pension benefits and any other benefits and entitlements on the winding up of a pension plan, in whole or in part,

Determi-
nation of
entitlements

- (a) the employment of each member of the pension plan affected by the winding up shall be deemed to have been terminated on the effective date of the wind up;
- (b) each member's pension benefits as of the effective date of the wind up shall be determined as if the member had satisfied all eligibility conditions for a deferred pension; and
- (c) provision shall be made for the rights under section 75.

(2) A person entitled to a pension benefit on the wind up of a pension plan, other than a person who is receiving a pension, is entitled to the rights under subsection 43 (1) (transfer) of a member who terminates employment and, for the purpose, subsection 43 (3) does not apply.

Transfer
rights on
wind up

75.—(1) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least fifty-five, at the effective date of the wind up of the pension plan in whole or in part, has the right to receive,

Combination
of age and
years of
employment

- (a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
- (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,
 - (i) the normal retirement date under the pension plan, or
 - (ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or
- (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

Part year

(2) In determining the combination of age plus employment or membership, one-twelfth credit shall be given for each month of age and for each month of continuous employment or membership at the effective date of the wind up.

Member for
ten years

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not wound up and if the membership of the member were continued shall be included in calculating the pension benefit under subsection (1) of a person who has at least ten years of continuous employment with the employer or has been a member of the pension plan for at least ten years.

Prorated
bridging
benefit

(4) For the purposes of subsection (3), if the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the bridging benefit shall be prorated by the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of pension benefits and a full bridging benefit under the pension plan if the pension plan were not wound up.

Notice of
termination
of
employment

(5) Membership in a pension plan that is wound up in whole or in part includes the period of notice of termination

of employment required under Part XII of the *Employment Standards Act*. R.S.O. 1980, c. 137

(6) Subsection (5) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment. Application of subs. (5)

(7) For the purposes of this section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer shall be deemed to have given the consent. Consent of employer

(8) This section and sections 74 (determination of entitlements), 85, 86 and 87 (guaranteed benefits) apply in respect of the wind up, in whole or in part, of a pension plan where the effective date of the wind up is on or after the 1st day of April, 1987. Application of section

(9) A person affected by a wind up who elects to receive a benefit under subsection (1) is not entitled to payment of any refund of contributions or interest under subsection 64 (3) or (4) (refunds). Refund

76.—(1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund, Liability of employer on wind up

- (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
- (b) an amount equal to the amount by which,
 - (i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Commission declares that the Guarantee Fund applies to the pension plan,
 - (ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
 - (iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 40 (3) (50 per cent rule) and section 75,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario.

Payment

(2) The employer shall pay the moneys due under subsection (1) in the prescribed manner and at the prescribed times.

Pension fund continues subject to Act and regulations

77. The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until all the assets of the pension fund have been disbursed.

Insufficient pension fund

78. Subject to the application of the Guarantee Fund, where the moneys in a pension fund are not sufficient to pay all the pension benefits and other benefits on the wind up of the pension plan in whole or in part, the pension benefits and other benefits shall be reduced in the prescribed manner.

SURPLUS

Payment out of pension fund to employer

79.—(1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.

Application for payment

(2) An employer who applies to the Commission for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to,

- (a) each member and each former member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members of the pension plan;
- (c) any other individual who is receiving payments out of the pension fund; and
- (d) the advisory committee established in respect of the pension fund.

Representations

(3) A person to whom notice has been transmitted under subsection (2) may make written representations to the Commission with respect to the application within thirty days after receiving the notice.

Return of excess amount

(4) The Commission may consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund or of an amount paid by the employer that should have been paid out of the pension fund, but shall not consent

unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment or the payment occurred.

80.—(1) The Commission shall not consent to payment of money that is surplus to the employer out of a continuing pension plan unless, Continuing pension plan

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or the applicant satisfies the Commission that the applicant is otherwise entitled to withdraw the surplus;
- (c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the employer's current service costs is retained in the pension fund as surplus;
- (d) where the members are not required to make contributions under the pension plan, the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

is retained in the pension fund as surplus;

- (e) where members are required to make contributions under the pension plan, all surplus attributable to contributions paid by members and the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

are retained in the pension fund as surplus; and

- (f) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Where no provision in pension plan

(2) A pension plan that does not provide for the withdrawal of surplus moneys while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus moneys accrued after the 31st day of December, 1986.

Application of subs. (2)

(3) Subsection (2) comes into force on the 1st day of January, 1989.

Wind up

(4) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Idem

(5) A pension plan that does not provide for payment of surplus moneys on the wind up of the pension plan shall be construed to require that surplus moneys accrued after the 31st day of December, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members and any other persons entitled to payments under the pension plan on the date of the wind up.

Application of subs. (5)

(6) Subsection (5) comes into force on the 1st day of January, 1989.

Decision

(7) The Commission shall transmit its decision, together with written reasons therefor, to the applicant and to each person who made written representations to the Commission in accordance with subsection 79 (3).

(8) The Commission may attach such conditions and limitations to its consent under this section as the Commission considers necessary in the circumstances.

Conditions
and
limitations

(9) The *Statutory Powers Procedure Act* does not apply in respect of a decision made by the Commission under this section.

Application
of
R.S.O. 1980,
c. 484

(10) The Commission shall not consent to payment of money from surplus to the employer out of a continuing pension plan until such date as may be prescribed.

Interim
prohibition
to giving
consent

SALES, TRANSFERS AND NEW PLANS

81.—(1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

Continuation
of benefits
under succes-
sor employer

- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

Exception

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

Employment
deemed not
terminated

Transfer
on sale

(4) Where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the pension benefits provided under the employer's pension plan, no transfer of assets shall be made from the employer's pension fund to the pension fund of the plan provided by the successor employer without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

Consent by
Superin-
tendent

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the employer's pension plan or that does not meet the prescribed requirements and qualifications.

Order for
return

(6) The Superintendent by order may require the transferee to return to the pension fund, with interest, assets transferred without the prior consent required by subsection (4).

Enforcement

(7) Subject to section 90 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Multi-
employer
pension
plan
R.S.O. 1980,
c. 288

(8) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan, the administrator of the first pension plan shall transfer to the administrator of the new pension plan all the assets and liabilities respecting those members who have elected under section 43 to transfer their entitlement to the new pension plan and the administrator of the new pension plan shall accept the transfer as assets and liabilities of the new plan.

Idem

(9) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan and the members are not entitled to make an election under section 43, the administrator of the old pension plan shall transfer to the administrator of the new pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the new pension plan shall accept them as assets and liabilities, determined as prescribed, of the new plan.

(10) Subsections (8) and (9) do not apply where there is a reciprocal agreement respecting the pension plans.

Application
of
subs. (8), (9)

(11) In this section, “successor employer” means the person who acquires the business or the assets of the employer.

Definition

82.—(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

Adoption
of new
pension plan

(2) The benefits under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits under the new pension plan.

Continuation
of benefits

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

Application
of subs. (2)

(4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

Transfer
of assets

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

Consent by
Superin-
tendent

(6) The Superintendent by order may require the transferee to return to the pension fund assets, with interest calculated in the prescribed manner, transferred without the prior consent of the Superintendent or transferred contrary to a prescribed term or condition.

Order

(7) Subject to section 90 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Enforcement

(8) No transfer of assets shall be made from one pension fund to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 43 or 81 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the

Fund to fund

purpose, subsections (5) to (7) apply with necessary modifications.

PENSION BENEFITS GUARANTEE FUND

Guarantee
Fund
continued

83.—(1) The Pension Benefits Guarantee Fund is continued.

Adminis-
tration

(2) The Commission is responsible for the administration of the Guarantee Fund including the investment of the assets of the Guarantee Fund.

Expenses

(3) The Commission may charge to the Guarantee Fund the reasonable expenses incurred by the Commission in the administration of the Guarantee Fund.

Loans to
Guarantee
Fund

(4) If at any time the amount standing to the credit of the Guarantee Fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Guarantee Fund on such terms and conditions as the Lieutenant Governor in Council directs.

Guarantee
Fund
declaration

84.—(1) The Commission, subject to section 91 (notice and representations), shall declare, in the circumstances mentioned in subsection (2), that the Guarantee Fund applies to a pension plan.

Conditions
precedent

(2) The Commission shall make the declaration if,

- (a) the pension plan is registered under this Act or is registered in a designated province to provide for the reciprocal application of this Act;
- (b) the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;
- (c) the pension plan is wound up in whole or in part; and
- (d) the Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied.

Guaranteed
benefits

85.—(1) Where the Guarantee Fund is declared by the Commission to apply to a pension plan, the following are guaranteed by the Guarantee Fund, subject to the limitations and qualifications as are set out in this Act or are prescribed:

1. Any pension in respect of employment in Ontario.
2. Any deferred pension in respect of employment in Ontario to which a former member is entitled, if the former member's employment or membership was terminated before the date on which this Act comes into force and the former member was at least forty-five years of age and had at least ten years of continuous employment with the employer, or was a member of the pension plan for a continuous period of at least ten years, at the date of termination of employment.
3. A percentage of any defined pension benefits in respect of employment in Ontario to which a member or former member is entitled under section 37 or 38 (deferred pension), or both, if the member's or former member's employment or membership was terminated on or after the date on which this Act comes into force, equal to 20 per cent if the combination of the member's or former member's age plus years of employment or membership in the pension plan equals fifty, plus an additional $\frac{2}{3}$ of 1 per cent for each additional one-twelfth credit of age and employment or membership to a maximum of 100 per cent.
4. All additional voluntary contributions, and the interest thereon, made by members or former members while employed in Ontario.
5. The minimum value of all required contributions made to the pension plan by a member or former member in respect of employment in Ontario plus interest.
6. That part of a deferred pension guaranteed under this subsection to which a former spouse of a member or of a former member is entitled under a domestic contract or an order under the *Family Law Act, 1986*. 1986, c. 4
7. Any pension to which a survivor of a former member is entitled under subsection 49 (1) (death before commencement of payment).

(2) For the purpose of this section, where a member or former member has at least ten years of continuous employment with the employer, a deferred pension or a pension benefit includes bridging benefits.

Bridging
benefits

Part year

(3) In determining the combination of age and membership or employment for subsection (1), one-twelfth credit shall be given for each full month of age and for each full month of continuous employment or membership as of the date of termination of employment.

Definition

(4) For the purpose of this section, "pension benefits" includes any benefits or options elected under section 75 (combination of age and years of employment).

Payments not guaranteed

86. The following are not guaranteed by the Guarantee Fund:

1. The payment of a pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of wind up.
2. Any increase to a pension or pension benefit or the value of a pension or pension benefit that became effective within three years before the date of wind up.
3. The amount of any pension or pension benefit, including any bridging supplement, in excess of \$1,000 per month or such greater amount as is prescribed by the regulations.
4. Pension benefits provided under a multi-employer pension plan.
5. Pension benefits provided under a pension plan that provides defined benefits, if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.
6. Pension benefits provided by prescribed pension plans or prescribed classes of pension plans.

Lien for payment out of Guarantee Fund

87.—(1) Where money is paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of a pension plan, the Commission has a lien and charge on the assets of the employer or employers who provided the pension plan.

Amount of lien

(2) The lien and charge is in an amount equal to the amount of the payment out of the Guarantee Fund plus interest thereon calculated at the rate and in the manner prescribed by the regulations.

(3) The lien and charge does not affect assets that are real property until a notice of the lien and charge that includes a description of the real property is registered in the proper land registry office, and the Commission may so register notice of the lien and charge. Real property

(4) The Commission is subrogated to the rights of the administrator of a pension plan in respect of which the Commission authorizes payment from the Guarantee Fund in satisfaction of a pension, deferred pension, pension benefit or contribution guaranteed under section 85 (guaranteed benefits). Subrogation

ORDERS

88.—(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 90 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund. Order by Superintendent

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds, Condition precedent to order

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

(3) In an order under this section, the Superintendent may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order. Time

(4) An order under this section is not effective unless the reasons for the order are set out in the order. Reasons for order

89.—(1) The Commission, in the circumstances mentioned in subsection (2) and subject to section 91 (notice and representations), by order may require an administrator to take the action specified in subsection (3). Order by Commission

(2) The Commission may make an order under this section where the Commission is of the opinion, Grounds for order

- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate for a pension plan;
- (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan do not accord with generally accepted actuarial principles; or
- (c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan.

Contents
of order

(3) An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.

HEARING AND APPEAL

Notice of
proposal
to refuse
or revoke

90.—(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

Notice of
proposal to
make order

(2) Where the Superintendent proposes to make an order under,

- (a) subsection 43 (9) (repayment of money transferred out of pension fund);
- (b) subsection 44 (5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
- (c) subsection 81 (6) (transfer of assets to pension fund of successor employer);
- (d) subsection 82 (6) (transfer of assets to new pension fund); or
- (e) section 88 (administration of pension plan or contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any

other person to whom the Superintendent proposes to direct the order.

(3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.

Notice of
proposal re
membership

(4) Where the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or consent.

Notice of
proposal to
attach terms
and
conditions
to approval
or consent

(5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.

Notice of
proposed
wind up
order

(6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

Notice
requiring
hearing

(7) Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may carry out the proposal stated in the notice.

Power of
Superin-
tendent

(8) Where the person requires a hearing by the Commission in accordance with subsection (6), the Commission shall appoint a time for and hold the hearing.

Hearing

(9) At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the

Power of
Commission

Commission may substitute its opinion for that of the Superintendent.

Conditions

(10) The Commission may attach such terms and conditions to its order or to the registration as the Commission considers proper to give effect to the purposes of this Act.

Parties

(11) The Superintendent, the person who requires a hearing and such other persons as the Commission specifies are parties to the proceeding before the Commission under this section.

Opportunity
to show
compliance

(12) A party to a hearing shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the registration of the pension plan.

Examination
of
documentary
evidence

(13) A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Release of
documentary
evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Notice of
proposal by
Commission

91.—(1) Where the Commission proposes to consider,

- (a) making a declaration that the Guarantee Fund applies to a pension plan;
- (b) making an order requiring the administrator of a pension plan to take specific action in relation to a report in respect of the pension plan; or
- (c) refusing to consent to a refund of contributions under section 64 (refunds),

the Commission shall serve notice of the proposal together with written reasons therefor on the administrator of the pension plan.

Additional
notices

(2) The administrator shall transmit copies of the Commission's notice to such other persons or classes of persons or both as the Commission specifies in the notice to the administrator.

(3) A notice by the Commission under subsection (1) shall state that the administrator, the persons and the representatives and members of classes of persons specified in the notice are entitled to make written representations to the Commission within thirty days after service of the notice under that subsection. Representations

(4) An individual who is entitled to make representations to the Commission under subsection (3) shall be afforded an opportunity, during the period of time when representations may be made, to examine any written or documentary evidence that will be produced or any report the contents of which will be considered by the Commission when the Commission considers its proposal. Examination of documentary evidence

(5) The Commission shall transmit a copy of its decision, together with written reasons therefor, to the administrator, the employer and every other person who made representations to the Commission in accordance with subsection (3). Notice of decision

(6) The *Statutory Powers Procedure Act* does not apply in respect of a declaration, refusal or order mentioned in subsection (1) by the Commission. Application of R.S.O. 1980, c. 484

92.—(1) A party to a proceeding before the Commission under section 80, 90 or 91 may appeal to the Divisional Court from the decision or order of the Commission. Appeal to court

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the prescribed fee, the Commission shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from. Certified copy of record

93.—(1) Three members of the Commission constitute a quorum for the purposes of a proceeding before the Commission under section 90, and decisions in such proceedings require the vote of a majority of the members of the Commission present at the hearing in the proceeding. Quorum and votes

(2) The Commission may sit in two or more panels simultaneously for the purposes of such proceedings. Panels

(3) The head of the Commission shall assign the members of the Commission to its panels and may change an assignment at any time. Assignment

(4) Where a proceeding is commenced before the Commission and the term of office on the Commission of a person sitting for the hearing expires or is terminated, other than for Expiry of member's term of office

cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Commission for the purpose of completing the proceeding in the same manner as if his or her term of office had not expired or been terminated.

PENSION COMMISSION

- Commission continued **94.**—(1) The Pension Commission of Ontario is continued.
- Composition (2) The Commission shall be composed of not fewer than five and not more than nine members appointed by the Lieutenant Governor in Council.
- Head and deputy head (3) The Lieutenant Governor in Council shall appoint the head and the deputy head of the Commission from among the members of the Commission.
- Term of office (4) The members of the Commission shall be appointed for terms of not more than three years and may be reappointed for further terms of not more than three years.
- Authority of deputy head (5) If the head of the Commission is absent or if there is a vacancy in the office of head of the Commission, the deputy head shall act as and have all the powers of the head of the Commission.
- Acting head (6) If both the head of the Commission and the deputy head are absent or if there are vacancies in the offices of head of the Commission and deputy head, the member of the Commission designated by the members of the Commission shall act as and have the powers of the head of the Commission.
- Vacancies (7) The Lieutenant Governor in Council may fill any vacancy in the membership of the Commission or in the offices of head or deputy head of the Commission.
- Quorum (8) A majority of the members of the Commission, including the head or deputy head of the Commission, constitutes a quorum.
- Employees
R.S.O. 1980,
c. 418 (9) Such employees as are necessary to carry out the business of the Commission shall be appointed under the *Public Service Act*.
- Salary and expenses (10) The members of the Commission shall be paid such remuneration and expenses as are fixed by the Lieutenant Governor in Council.

95.—(1) The office of Superintendent of Pensions is continued.

Superintendent

(2) The Superintendent shall be appointed by the Commission.

Appointment

(3) The Superintendent is the chief administrative officer of the Commission.

Chief administrative officer

(4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission.

Powers and duties

(5) The Superintendent may delegate in writing any power or duty of the Superintendent under this Act to any employee of the Commission, subject to the approval of the Commission and subject to any limitation or condition set out in the delegation.

Delegation of powers and duties

96.—(1) The Commission may, subject to the approval of the Lieutenant Governor in Council,

Reciprocal agreements

- (a) enter into agreements with the authorized representatives of another province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;
- (b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Commission as the Commission may require; and
- (c) delegate to a pension supervisory authority or the government of a designated province such functions and powers under this Act as the Commission may determine and the Commission may accept similar delegations of functions and powers from a pension supervisory authority or the government of a designated province.

(2) Where a pension plan required to be registered in Ontario is registered in a designated jurisdiction, the Commission by order may limit the application of this Act and the regulations to the pension plan and authorize the application of the law of the designated jurisdiction in respect of the pension plan.

Applicable law

Duty of
Commission

97. It is the duty of the Commission,

- (a) to administer this Act and the regulations;
- (b) to promote the establishment, extension and improvement of pension plans throughout Ontario;
- (c) to advise the Minister in respect of the business of the Commission; and
- (d) to make recommendations to the Minister in respect of pension plans.

Research

98.—(1) It is a function of the Commission to conduct surveys and research programs and to compile statistical information related to pensions and pension plans.

Provision of
information

(2) The Commission may request an employer or an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such persons shall comply with the request within a reasonable period of time.

Confidenti-
ality

(3) The Commission shall use the information only for the purpose of compiling the statistical information.

Information

99.—(1) The Superintendent may require an employer, an administrator or any other person to supply to the Commission or the Superintendent such information in such form as is acceptable to the Superintendent and within such time limits as specified for the purpose of ascertaining whether or not this Act and the regulations are being complied with.

Idem

(2) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Superintendent or other person designated by the Superintendent.

Appraisal

(3) The Superintendent may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers or the Superintendent may obtain the appraisal at the expense of the administrator.

Time

(4) The administrator shall deliver the appraisal to the Superintendent within the period of time specified by the Superintendent in the requirement or within such other period of time as the Superintendent may specify.

100. Every person entrusted by the Commission with the custody or control of money in the course of employment shall give security in the manner and form provided by the *Public Officers Act*.

Security

R.S.O. 1980,
c. 415

101. No member of the Commission or of the staff of the Commission is personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Act or the regulations or for alleged neglect or default in the execution in good faith of such a duty or authority.

Liability of
members and
employees of
Commission

102. The Provincial Auditor shall examine annually the accounts and financial transactions of the Commission.

Audit

103.—(1) The Commission shall report annually to the Minister on the business of the Commission.

Annual
report

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Idem

GENERAL

104. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefits under this Act.

Pension
agency

105. Every pension plan that was registered and that continued to be qualified for registration under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this Act, shall be deemed to be registered upon the coming into force of this Act.

Transitional

106. The Commission or the Superintendent may extend any time limit under this Act or the regulations before or after the expiration of the time if satisfied that there are reasonable grounds for applying for the extension, and may give such directions as the Commission or the Superintendent considers proper consequent upon the extension.

Extension
of time

107.—(1) The persons referred to in subsections (3) to (5) and (8) to (10) are the following:

Interpre-
tation,
persons

1. The Superintendent.

2. Any person designated by the Superintendent or the Commission.

Interpre-
tation,
purposes

- (2) The purposes mentioned in subsections (3) to (5) and (10) are the following:

1. The administration of this Act and the regulations.
2. The administration of the Guarantee Fund.
3. The enforcement of any section of this Act or the regulations.
4. The exercise of a power or the carrying out of a duty under this Act or the regulations.
5. The carrying out of an order made under this Act.

Entry

- (3) For a purpose mentioned in subsection (2), a person mentioned in subsection (1) may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to a pension plan or pension fund.

Examinations

- (4) A person mentioned in subsection (1) may make examinations, investigations and inquiries and may require the production of any book, paper, document or thing related to a pension plan or pension fund.

Samples or
extracts

- (5) A person mentioned in subsection (1) may make, take and remove or require the making, taking and removal of copies or extracts related to an examination, investigation or inquiry for a purpose mentioned in subsection (2).

Reasonable
times

- (6) The authority under subsections (3) to (5) shall be exercised only at reasonable times.

Private
residence

- (7) Subsection (3) is not authority to enter a private residence without the consent of the occupier.

Removal of
books, etc.,
for copying

- (8) A person mentioned in subsection (1) who is making an examination, investigation or inquiry may, upon giving a receipt therefor, remove any books, papers, documents or things relating to the subject-matter of the examination, investigation or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out with reasonable dispatch and the books, papers, documents or things shall be returned forthwith after the copying is completed.

(9) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by a person mentioned in subsection (1) is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would have been admissible. Copies

(10) If an occupier of premises,

Application
for warrant

- (a) denies entry or access to, through or over the premises to a person mentioned in subsection (1);
- (b) instructs a person mentioned in subsection (1) to leave the premises;
- (c) obstructs a person mentioned in subsection (1) who is acting for a purpose mentioned in subsection (2);
- (d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a purpose mentioned in subsection (2),

a person mentioned in subsection (1) may apply to a justice of the peace for an inspection order under section 109.

(11) A person exercising a power under this section shall provide identification at the time of entry. Identification

108.—(1) No person shall hinder or obstruct a person mentioned in subsection 107 (1) who is lawfully carrying out a duty under this Act. Obstruction

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1). Private
residence

109.—(1) Where a justice of the peace is satisfied on evidence upon oath, Order by
justice of
the peace

- (a) that there is reasonable and probable ground for believing that it is necessary,
 - (i) to enter and have access to, through and over any premises,
 - (ii) to make examinations, investigations or inquiries, and

(iii) to make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things, for a purpose mentioned in subsection 107 (2); and

(b) that a person mentioned in subsection 107 (1),

(i) has been denied entry to the premises,

(ii) has reasonable grounds to believe that entry to the premises will be denied,

(iii) has been instructed to leave the premises,

(iv) has been obstructed, or

(v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing a person mentioned in subsection 107 (1) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as they call upon to assist them.

Execution
of order

(2) An inspection order issued under this section shall be executed between 6 a.m. and 9 p.m. standard time unless the justice of the peace otherwise authorizes in the order.

Expiry of
order

(3) An inspection order issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the inspection order is issued.

Ex parte
application

(4) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises.

Offence

110.—(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Idem

(2) Every person who contravenes an order made under this Act is guilty of an offence.

111.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$25,000. Penalty

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed is \$100,000 and not as provided in subsection (1). Corporation

(3) Where a corporation is guilty of an offence under this Act, an officer, official, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to a fine of not more than \$25,000. Officers,
etc.

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company. Order for
payment

(5) An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court. Enforcement

(6) No proceeding under this Act shall be commenced after five years after the date when the subject-matter of the proceeding occurred or is alleged to have occurred. Time limit

112. Where a provision of this Act or the regulations or an order or approval of the Commission or the Superintendent under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the Commission or of the administrator of a pension plan affected by the contravention. Power to
restrain

113.—(1) Any notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at his or her last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the seventh day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive the notice, order or other document, or did not receive it until a later Deemed
service

date, through absence, accident, illness or other cause beyond his or her control.

General
notice

(3) Where the Superintendent is of the opinion that because the persons who are to be given any notice or document under this Act or the regulations are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Superintendent may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Superintendent may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is given.

Time for
actions by
administrator

114. An administrator of a pension plan who is required to take an action under this Act or the regulations shall take the action within the prescribed period of time.

Conflict

1987, c. 35

115. In the event of a conflict between this Act and any other Act, this Act prevails unless the other Act states that it is to prevail over the *Pension Benefits Act, 1987*.

Regulations

116.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) prescribing the times for filing or the last dates for filing of documents that are required to be filed under this Act;
- (c) prescribing reports that shall be submitted to the Commission, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared;
- (d) prescribing pension benefits that are not guaranteed by the Guarantee Fund;
- (e) prescribing assessments for the purposes of the Guarantee Fund and prescribing the classes of employers that shall pay such assessments;
- (f) prescribing procedures that shall govern the appointments of members of pension committees and advisory committees;

- (g) prescribing procedures that shall govern the establishment of advisory committees and the appointments of members of advisory committees;
- (h) prescribing fees that shall be paid for copies of documents provided by the Commission;
- (i) prescribing the methods of calculating the values of assets and liabilities of pension funds;
- (j) prescribing criteria that must be complied with before any surplus may be paid out of a pension fund;
- (k) prescribing the rate or the method of determining the rate at which an employer shall pay moneys due from the employer under this Act on the winding up of a pension plan, and prescribing the manner of payment and to whom the payments shall be made;
- (l) regulating or prohibiting the investment of moneys from pension funds and prescribing investments or classes of investments in which such moneys may be invested;
- (m) prescribing requirements for retirement savings contracts and life annuity contracts between members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made, and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;
- (n) prescribing the rate of interest and the method of calculating interest payable under this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;
- (o) prescribing forms and providing for their use;
- (p) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served shall be given, transmitted, filed or served;
- (q) prescribing requirements that shall be complied with in the administration of a pension plan;

- (r) prescribing records that shall be kept by the administrator of a pension plan and the period of time for which such records shall be retained by the administrator;
- (s) requiring the audit of pension plans or classes of pension plans and pension funds and classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;
- (t) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable to employment before the date on which this Act comes into force or that is attributable to employment after the date on which this Act comes into force;
- (u) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada);
- (v) governing the wind up of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind up, including priorities in allocation of assets;
- (w) governing the receiving, holding and disbursing of pension benefits by any agency established or designated under this Act;
- (x) exempting pension plans, pension funds, employees, administrators or other persons from the application of this Act or the regulations or from any section of this Act or the regulations.

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

Scope of
regulations

(2) A regulation may be general or particular in its application and may be limited as to time or place or both.

Adoption of
codes in
regulations

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with a code, formula, standard or procedure so adopted.

Terms,
conditions,
qualifications,
requirements

(4) Any provision of a regulation may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation.

117. The *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980 and the *Pension Benefits Amendment Act, 1983*, being chapter 2, are repealed. Repeals

118. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

119. The short title of this Act is the *Pension Benefits Act*, Short title
1987.

